who is summoned in a foreign state must give notice to the principal defendant, in order that such defendant may have an opportunity to come in and defend. And if such notice is not given, payment under the garnishment proceedings will not avail the garnishee as a defense when sued by his creditor. See *Morgan* v. *Neville,* 74 Pa. St. 52. In the principal case, however, a limitation to this rule is announced to the effect that notice is not required when judgment has been obtained in the foreign state after personal service upon the defendant.

HUSBAND AND WIFE—HUSBAND AS WITNESS IN ACTION BY WIFE.—In an action by a husband and wife against the lessor of premises for injuries sustained by the wife in falling on a floor by reason of a latent defect therein, the husband's testimony as to how the injuries were received, was objected to on the ground that he was without interest in the claim. *Held,* that the husband's testimony was properly excluded. *Bianchi et ux* v. *Del Valle* (1906), — La. —, 42 So. Rep. 148.

The old common law rule that parties interested in the suit were not competent to testify against each other, has been abrogated by statute in every state in the Union. But statutory enactments admitting the testimony of parties interested, have not been construed to admit the tesimony of either husband or wife, for or against the other, the exclusion in this case being based upon grounds of public policy. *Gensburg* v. *Morroll,* 105 Ill. App. 213; *Case* v. *Colter,* 66 Ind. 336; *Barber* v. *Goddard,* 9 Gray (Mass.) 71; *Farrell* v. *Ledwell,* 21 Wis. 182. The result is that the competency of the husband or wife to testify in actions brought for or against one or the other, depends entirely upon statutes, no two of which appear to bear much similarity in their provisions. As to whether a party of record without interest in the suit is disqualified from testifying, the weight of authority seems to be to the effect that he is not, although many of the foremost courts, including New York, hold that a party to the record, though free of interest, is not a competent witness. *Steiger* v. *Gross,* 7 Mo. 261; *Entripen* v. *Brown,* 32 Pa. St. 364; *Fox* v. *Whitney,* 16 Mass. 118; *Murphy* v. *Carter,* 23 Gratt. (Va.) 485; *Mark* v. *Butler,* 24 Ill. 567. But generally speaking, in cases where one spouse, though a party to the record, has no interest in the result of the suit and is merely joined for conformity, the other is a competent witness. *Green* v. *Taylor,* 3 Hughes, 400; *Belk* v. *Cooper,* 34 Ill. App. 649; *Gordon* v. *Sullivan,* 116 Wis. 543; *Buckingham* v. *Roar,* 45 Neb. 244. Under the peculiar provisions of the Louisiana Code, either spouse is permitted to testify either for or against the other only when they may be joined as plaintiffs or defendants and have a separate interest. It appearing that the damages when recovered were to become a portion of the wife's separate estate, the husband having no separate interest, his testimony was incompetent.

INSURANCE—MUTUAL BENEFIT ASSOCIATIONS—POWERS OF AGENTS—EXCUSES FOR NON-PAYMENTS OF ASSESSMENTS—FORFEITURE.—Defendant, a fraternal mutual benefit association having a head camp and various local camps throughout the United States, had issued to one S. a benefit certificate subject

to conditions named therein. One provision was that if the assessments were not paid to the clerk of the local camp at a given time the certificate should be null and void. The by-laws were made a part of the contract, and they provided that if the payments were not made by the required time the member would become suspended. The by-laws further provided that the clerk of the local camp was the agent of the local camp and not of the head camp, that such agent had neither power nor authority to waive any of the conditions regarding payments, and that a suspended member might become reinstated by showing proper certificates and receiving the approval of certain head officers. S. became insane in December, 1901, and an assessment was due January 1, 1902; he was notified according to the by-laws that the assessment had been made and was due. His divorced wife wrote and asked the clerk of the local camp to notify her when assessments were due, and the clerk replied that he would do so, but failed to notify her that the payments were due and unpaid, and S. was suspended by the company for failure to pay. *Held,* that the agreement with the local clerk was not binding on the head camp, and that the insanity of S. would not excuse the failure to make the payments. *Sheridan* v. *Modern Woodmen of America* (1906), — Wash. —, 87 Pac. Rep. 127.

The notice sent out for the assessment due January 1, 1906, was sufficient under the by-laws, but the plaintiff claims that the agreement of the clerk to notify the divorced wife was a waiver by the company of the provision of the by-laws. That it is not see *Modern Woodmen* v. *Tevis,* 117 Fed. 369. That case held that a waiver by a local clerk of conditions exactly similar to the case under discussion was not binding upon the association. A principal may limit the authority of his agent, and when that is done the agent cannot bind the principal beyond the limits of the contract. *Assurance Co.* v. *Bldg. Asso.,* 183 U. S. 308; *Elder* v. *Grand Lodge,* 79 Minn. 468; *Harvey* v. *Grand Lodge,* 50 Mo. App. 472. Plaintiff's contention that the insanity of the insured is an excuse for failure to pay the assessments is met by *Pitts* v. *The Hartford Life, etc., Co.,* 66 Conn. 376, 50 Am. St. Rep. 96. The court in that case, speaking of a contract requiring payments by a specified time or a forfeiture of the policy, says, "While, as a general rule, where the performance of a duty required by law is prevented by inevitable accident, without fault of the party, the default will be excused, yet when a person, by express contract, engages absolutely to do an act not impossible or unlawful at the time, neither inevitable accident, nor other unforeseen contingency not within his control, will excuse him, for the reason that he might have provided against them by his contract." See also, *Wheeler* v. *Insurance Co.,* 82 N. Y. 543; *Hawkshaw* v. *Insurance Co.,* 29 Fed. 770; *Yoe* v. *Ins. Co.,* 63 Md. 86.

INSURANCE—RIGHT OF INSURED TO CHANGE BENEFICIARY—EFFECT OF RECEIPT OF APPLICATION TO CHANGE AFTER DEATH OF INSURED.—One S. was a member of the Order of the Knights of the Maccabees. His wife was the beneficiary in a policy issued by the order to him. The by-laws of the organization provided that the beneficiary might be changed upon receipt of proper application. S. and his wife separated and S. changed his domicil. Wishing